

MINUTES OF THE OPEN SESSION OF THE RHODE ISLAND ETHICS COMMISSION

June 20, 2006

The Rhode Island Ethics Commission held its 12th meeting of 2006 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, June 20, 2006, pursuant to the notice published at the Commission Headquarters and at the State House Library.

The following Commissioners were present:

James Lynch, Sr., Chair Richard E. Kirby*

Barbara Binder, Vice Chair Frederick K. Butler

George E. Weavill, Jr., Secretary Ross Cheit

James V. Murray

Also present were Kathleen Managhan, Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Jason M. Gramitt, Staff Attorney/Education Coordinator; Staff Attorney Dianne Leyden and Commission Investigators Steven T. Cross, Peter J. Mancini, and Michael Douglas.

At approximately 9:08 a.m., the Chair opened the meeting.

The first order of business was to approve the minutes of the Open Session held on June 6, 2006. Upon motion made by Commissioner Butler, duly seconded by Commissioner Binder, it was unanimously

VOTED: To approve the minutes of the Open Session held on June 20, 2006.

AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Jr., Frederick K. Butler and Ross Cheit.

ABSTENTION: James V. Murray.

**At approximately 9:10 a.m., upon motion made by Commissioner Murray,
duly seconded by Commissioner Weavill, it was unanimously**

VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5 (a)(4), to wit:

a.) To approve the minutes of Executive Session held on June 6, 2006.

**b.) In re: John A. Celona,
Complaint Nos. 2003-9, 2004-4, 2004-8.**

AYES: James Lynch, Sr., James V. Murray, Richard E. Kirby, Barbara

Binder, George E.Weavill, Jr., Frederick K. Butler and Ross Cheit.

At approximately 10:43 a.m., the Commission returned to Open Session and Commissioner Kirby left the meeting.* Upon motion made by Commissioner Murray and duly seconded by Commissioner Weavill, it was unanimously

VOTED: To seal the minutes of the Executive Session held on June 20, 2006.

AYES: James Lynch, Sr., James V. Murray, Barbara Binder, Ross Cheit, George E.Weavill, Jr., and Frederick K. Butler.

The Commission took a brief recess and reconvened at approximately 10:46 a.m., with Commissioner Kirby present. Chair Lynch reported out that in Executive Session the Commission voted to hold a public hearing on July 25, 2006 in the matters of In re: John A. Celona, Complaint Nos. 2003-9, 2004-4, 2004-8.

The next order of business was discussion of draft regulatory proposals regarding Nepotism and Revolving Door. Staff Attorney Gramitt discussed changes made to the nepotism proposal at Subcommittee A's direction. He stated that he agreed with Legal Counsel Managhan's suggestion that "as part of his or her public duties" be added to subsection (b)(1) to clarify that the prohibition does not apply to private conduct. Commissioner Butler inquired as

to the definition of “employment advantage” and whether it would mean something that would make a person eligible for a pay raise or promotion. Staff Attorney Gramitt indicated that the Commission could develop that definition through its advisory opinion and complaint processes. Commissioner Kirby noted that the Commission could make fact findings on a case by case basis.

Commissioner Butler stated that many employers offer education to help employees do their jobs better, but employment advantage infers comparison to other employees. Commissioner Cheit suggested using language as to where it is reasonably foreseeable that it would give an increase in salary or promotion. Staff Attorney Gramitt replied that such language would bring the prohibition back to a financial benefit component and the Commission previously indicated that it wanted to be broader to address the concerns raised in the Golden complaint. Commissioner Butler suggested that the Commission first hear the public comment on the proposal. Commissioner Cheit expressed that early September would be the better time to hold the public hearing, rather than the summer.

Senior Staff Attorney D’Arezzo reported on the Revolving Door proposals and stated that there were no changes to Draft Proposal A from the last meeting. She summarized revisions made to Draft Proposal B, noting the addition of the language “including but not limited to a department director position” and “on the staff of the highest official in municipal government.” She reported that

subsection (c) had been added at the Commission's direction to mirror the state statutory exception allowing senior staffers to move to similar positions within the governmental unit. Commissioner Binder questioned whether the proposal should name the positions of mayor and town manager, rather than stating "highest municipal official." Commissioner Butler noted that the individual charters would determine who the highest official is. Commissioner Weavill pointed out that in his municipality the town administrator is the highest official. Commissioner Murray expressed that it would be up to the town to make that determination, with input from its counsel. Commissioner Weavill stated that in some towns the mayor is simply a titular head. Commissioner Kirby questioned whether the Commission is distinguishing executive managerial positions from legislative positions. Commissioner Binder proposed using the term "chief executive officer" and stating that it may include the positions of town administrator, mayor or town manager. The consensus of the Commission was to include that language in subsections (a), (b) and (c).

Senior Staff Attorney D'Arezzo advised that there had been no changes to Draft Proposal C since the last meeting. She highlighted revisions to Draft Proposal D which substitute the term "substantial involvement" in section (a), subsections (a)(1) and (a)(2) and further define that term in subsection (a)(4). She indicated that the language in Subsection (a)(1)(b)(1) has been revised to mirror the statutory language more closely. Senior Staff Attorney D'Arezzo reported that

section (b)'s language is more problematic because, depending upon how it is drafted, it could have the unintended effect of capturing employees heading divisions within the Department of Administration. She summarized difficulties encountered by the staff during the drafting process and noted that, absent including a list of specific positions that would otherwise fall outside of the departments enumerated in R.I. Gen. Laws § 42-6-1, not all key positions would be targeted. She stated that including broader language could also capture positions that the Commission may not want to target, such as the State Council on the Arts or the Commission on the Deaf and Hard of Hearing, which are divisions within the Department of Administration and appointed by the Governor. She added that there could be other positions not listed in the statute that perhaps should be included, such as the Adjutant General.

Commissioner Binder indicated that the Commission may want to include positions such as the Director of State Council on the Arts within the prohibition, since it is a gubernatorial appointment. Commissioner Kirby suggested that the staff provide notice to the Governor's Office that the proposal may be targeting some of these appointees and ask for input regarding their duties and responsibilities. Senior Staff Attorney D'Arezzo advised that the APA requires the Commission to provide the Governor and the EDC with notice of the proposed regulations prior to the public hearing to obtain their comments. Commissioner Cheit asked if the

Commission could consider alternative versions of the proposal, one containing only those positions listed in the statute, and the other containing broader language. In response to Commissioners Weavill and Kirby, Senior Staff Attorney D'Arezzo informed that any substantive changes to the proposal during the public hearing would require re-noticing the hearing.

There was further discussion regarding the language to be included in the two alternative proposals. Senior Staff Attorney D'Arezzo clarified that there would be alternative #1, targeting only those state departments listed in the statute, and alternative #2, targeting directors or heads of a state department, as listed in the statute and including divisions within the Department of Administration who are appointed by the Governor and/or the Director of the Department of Administration. Commissioner Binder observed that the language citing to the statute should read "as may be amended from time to time." Senior Staff Attorney D'Arezzo stated that the staff would draft the two options discussed and bring them back for review at the July 25th meeting. Staff Attorney Gramitt reported that minor changes were made to Draft Proposal E for clarification purposes. Senior Staff Attorney D'Arezzo advised that no changes had been made to Draft Proposal F.

The next order of business was the Director's Report. Executive Director Willever reported that there are five advisory opinions and six complaints pending. He stated that requests for education

continue to increase. Staff Attorney Gramitt provided a legislative update and noted that the Lieutenant Governor's Public Accountability Act of 2006 has passed the House. The bill requires the general officers to disclose all sources and amounts of income, within stated ranges. He reported that a floor amendment eliminates the requirement that the officials must take the training, but requires the Commission to offer such training to major decision makers twice yearly and provide certification thereof. He noted that the training could be conducted online and the Commission would have to make some changes to its educational program. In response to Commissioner Butler, he stated that it is too late to take the bill's fiscal impact into account for the FY 07 budget. In response to Commissioner Murray, he clarified that it would be mandatory for the Commission to offer the training, but voluntary as to the official's attendance. Commissioner Binder expressed support for such training.

The next order of business was discussion of Legal Counsel's contract. *Legal Counsel Managhan left the meeting at 10:45 a.m. Commissioner Kirby voiced his support for rehiring Legal Counsel Managhan. Upon motion made by Commissioner Murray and duly seconded by Commissioner Weavill, it was unanimously

VOTED: To renew Legal Counsel Managhan's contract for the next fiscal year.

AYES: James Lynch, Sr., James V. Murray, Richard E. Kirby, Barbara Binder, George E. Weavill, Jr., Frederick K. Butler and Ross Cheit.

The next order of business was New Business. There being none, at 10:46 a.m. upon motion made by Commissioner Kirby and duly seconded by Commissioner Binder, it was unanimously

VOTED: To adjourn the meeting.

AYES: James Lynch, Sr., James V. Murray, Richard E. Kirby, Barbara Binder, George E. Weavill, Jr., Frederick K. Butler and Ross Cheit.

Respectfully submitted,

George E. Weavill, Jr.
Secretary